APPENDIX "A"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NOS. 85-5020, 82-5021, 82-5022

UNITED STATES OF AMERICA

v.

PAUL BENDETTI,
Appellant in No. 82-5020
DENNIS MASTRO,
Appellant in No. 82-5021
PETER DeLAMOS,
Appellant in No. 82-5022

On Appeal from the United States District Court
for the District of New Jersey
Crim. Nos. 79-00321-02/03/04

Argued September 14, 1982

Before: ADAMS, HUNTER and BECKER, *Circuit Judges*

JUDGMENT ORDER

After considering the contentions raised by appellants, namely, that (1) the trial court erred in refusing (a) to consider a Federal Rule of Criminal Procedure 11(e) (1) (c) plea bargain, and (b) to dismiss the indictment as to Peter DeLamos; (2) the trial court abused its judicial role by (a) extensive bench-screening of testimony, (b) questioning witnesses, (c) refusing to permit a defense witness to testify as to certain matters,

(d) giving a factual charge to the jury that was slanted in favor of the prosecution, and (e) submitting special interrogatories to the jury regarding the complicity of three alleged co-conspirators; (3) the court have erroneous instructions on the elements of a conspiracy to violate 18 U.S.C. § 1962 (Racketeer Influenced and Corrupt Organiztions Act); (4) the district court violated the appellants' Sixth Amendment rights by admitting into evidence certain tape-recorded conversations; (5) the Fifth Amendment due process rights and Sixth Amendment right to compulsory process were violated by the exclusion of certain evidence; (6) their convictions were without the support of substantial, legally admissible evidence; and (7) their convictions as to all counts must be reversed, it is

ADJUDGED AND ORDERED that the judement of the district court be and is hereby affirmed.

BY THE COURT,

_____

Circuit Judge

ATTEST:

_____

Sally Mrvos, Clerk

Dated: September 29, 1982

APPENDIX "A"
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

September 29, 1982

Frank T. Swain, Esq.
Oscar B. Goodman, Esq.
Samuel Rosenthal, Esq.
John J. Momot, Esq.
Elliott H. Vernon, Esq.

NOTICE OF JUDGMENT

A Judgment-Order was entered today in case Nos. 82-5020/1/2 and a copy is enclosed herewith.

PETITION FOR REHEARING (FRAP 40)

When a petition for rehearing has been filed by a party as provided by FRAP 35(b) or 40(a), unless the petition for panel rehearing under 40(a) states explicitly it does not request en banc hearing under 35(b), it is presumed that such petition requests both panel rehearing and rehearing en banc.

Filing Time

A petition may be filed within 14 days after entry of judgment. No extension will be granted save for the most compelling reasons. The petition must be *received* in the Clerk's office within the 14 day period.

The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. No answer to a petition for rehearing will be received unless re-

quested by the court. Oral argument in support of the petition will not be permitted.

Statement of Counsel

Where the party petitioning for rehearing en banc is represented by counsel, the petition shall contain, so far as is pertinent, the following statement of counsel:

> "I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that consideration of the full court is necessary to secure and maintain uniformity of decisions in this Court, to-wit, the panel's decision is contrary to the decision of this Court or the Supreme Court in [citing specifically the case or cases],
>
> Or, that this appeal involves a question of exceptional importance, to-wit [set forth in one sentence].

Form

The 15 page limit allowed by the Rule shall be observed.

Number of Copies

An original and 10 copies of a petition for rehearing before the Court en banc is required.

An original and 3 copies of a petition for rehearing before the original panel is required.

Bill of Costs (FRAP 39)

Filing Time

A party to whom costs are allowed, who desires taxation of costs, shall file a bill of costs within 14 days after judgment. The bill of costs must be *received* in the Clerk's office within the 14 day period.

Form

Counsel desiring to have costs taxed against the unsuccessful party under Rule 39, FRAP, is requested to furnish an itemized and verified statement from the printer showing the actual costs per page for reproducing the brief and appendix (if any). Proof of service of the bill of costs must be attached to the bill.

Mandate (FRAP 41)

Issuance Time

The mandate is issued 21 days after judgment. A timely petition for rehearing will stay the issuance. If the petition is denied, the mandate will issue 7 days later. A motion for stay of mandate should be promptly filed if parties intend to file a petition for writ of certiorari to the Supreme Court of the United States.

Enclosure Sally Mrvos, Clerk

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NOS. 85-5020/21/22

UNITED STATES OF AMERICA,

Appellee

v.

PAUL BENDETTI, DENNIS MASTRO
and PETER DeLAMOS,

Appellants

(Crim. Nos. 79-00321/02/03/04)

**SUR PETITION FOR REHEARING
EN BANC**

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER and BECKER, *Circuit Judges*.

The petition for rehearing filed by Appellants

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

_____

Circuit Judge

Dated: Oct. 22, 1982

October 22, 1981

Re: United States of America vs. Paul Bendetti, Dennis Mastro and Paul DeLamos, Appellants

Nos. 82-5020/21/22

Dear Counsel:

Enclosed herewith is conformed copy of Order entered by the Court today in the above-entitled case.

Very truly yours,
Sally Mvros, Clerk

By: _____
Betty J. Robinson
Deputy Clerk

ch
Enclosure
Copies to all parties

APPENDIX "C"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 82-5020/22

UNITED STATES OF AMERICA

vs.

BENDETTI, PAUL,
Appellant in No. 82-5020
MASTRO, DENNIS,
Appellant in No. 82-5021
DeLAMOS, PETER,
Appellant in No. 82-5022

(D.C. Crim. Nos. 79-00321-02/3/4)

Pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, it is O R D E R E D that issuance of the certified judgment in lieu of formal mandate in the above cause be, and it is hereby stayed until Nov. 28, 1982.

Judge

Dated: November 1, 1982

APPENDIX "C"

Elliot H. Vernon, Esquire
Vernon, Whitmore, McGuire and Donington
Mill Run Building
20 Avenue at the Common
P.O. Box 335
Shrewsbury, NJ 07701

Re: U.S.A. vs. Bendetti, Paul, Appellant in *No. 82-5020*
U.S.A. vs. Mastro, Dennis, Appellant in *No. 82-5021*
U.S.A. vs. DeLamos, Peter, Appellant in *No. 82-5022*

Dear Mr. Vernon:

Enclosed herewith is a conformed copy of order filed today staying the issuance of the mandate to November 28, 1982, in the above-entitled cases.

If during the period of the stay we receive notification from the Clerk of the Supreme Court that a petition for writ of certiorari has been filed, the stay shall continue until final disposition by the Supreme Court.

Very truly yours,

Deputy Clerk

mmd

cc: Frank T. Swain, Esquire
Oscar B. Goodman, Esquire
Samuel Rosenthal, Esquire
John J. Momot, Esquire